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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION,	)	Case No.
a state agency,)	
	)	FPPC No.: 02/522
Plaintiff,)	
	)	COMPLAINT FOR PRELIMINARY
v.	)	AND PERMANENT INJUNCTION
	)	AND FOR CIVIL PENALTIES
AMERICAN CIVIL RIGHTS COALITION, INC.,	)	UNDER THE POLITICAL REFORM
WARD CONNERLY, and DOES 1-50,	)	ACT OF 1974, AS AMENDED
)	
Defendants.	)	(Government Code §§ 91001(b), 91003,
	)	91004 and 91005.5)
)	
	)	UNLIMITED CIVIL ACTION

Plaintiff FAIR POLITICAL PRACTICES COMMISSION, a state agency, alleges as follows:

1. Plaintiff brings this action in the public interest to enforce the provisions of the Political Reform Act of 1974. (Government Code sections 81000 through 91014.)

JURISDICTION AND VENUE

2. This court has original jurisdiction over the amount in controversy in this matter. As the causes of action in this matter occurred in connection with campaign statements and reports that should have been filed with the Office of the California Secretary of State, located in the County of

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1 Sacramento, the County of Sacramento is the proper venue for this action, pursuant to Code of Civil
2 Procedure section 393.

3 **PARTIES**

4 **PLAINTIFF FAIR POLITICAL PRACTICES COMMISSION**

5 3. Plaintiff Fair Political Practices Commission (the “Commission”) is a state agency
6 created by the Political Reform Act of 1974 (the “Act”). The Commission has primary responsibility for
7 the impartial, effective administration and implementation of the Act. (Gov. Code § 83111.) Pursuant
8 to Government Code section 91001, subdivision (b), the Commission is the civil prosecutor for matters
9 involving state committees and state election campaigns, and is authorized to maintain this action under
10 Government Code sections 91001, subdivision (b), 91003, subdivision (a), 91004, and 91005.5.

11 **DEFENDANT AMERICAN CIVIL RIGHTS COALITION**

12 4. Defendant American Civil Rights Coalition, Inc. (“ACRC”) was, at all times relevant to
13 this matter, a California nonprofit corporation, a recipient committee as defined in Government Code
14 section 82013, subdivision (a), and a state general purpose committee as defined in Government Code
15 section 82027.5, subdivisions (a)-(b). Defendant ACRC is the sponsor of the Racial Privacy Initiative
16 Committee (the “RPI Committee”), a primarily formed ballot measure committee as defined in
17 Government Code section 82047.5, subdivision (a), that was formed to support Proposition 54, which is
18 currently scheduled to appear on the ballot in the October 7, 2003, statewide special election.

19 5. Defendant Ward Connerly is the Chief Executive Officer of defendant ACRC, and as
20 such, is the person “primarily responsible for initiating and implementing the political activity” of
21 defendant ACRC. Defendant Connerly is therefore the treasurer of the defendant ACRC committee, by
22 operation of law, pursuant to Title 2, California Code of Regulations (“CCR”) section 18427,
23 subdivision (d).

24 6. Defendants Doe 1 through Doe 50, inclusive, are sued in this complaint under fictitious
25 names. Their true names and capacities are unknown to plaintiff. When their true names and capacities
26 are ascertained, plaintiff will amend this complaint by inserting their true names and capacities herein.
27
28

7. An express purpose of the Act, as set forth in Government Code section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and so that improper practices may be inhibited.

9. Government Code section 82013, subdivision (a) defines a “committee” as any person or combination of persons who directly or indirectly receives contributions of \$1,000 or more in a calendar year.

11. CCR section 18215, subdivision (a) states that a contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is, *inter alia*, for the purposes of influencing or attempting to influence the action of the voters for or against qualification or passage of any measure.

12. Pursuant to CCR section 18215, subdivision (b)(1), a contribution includes any payment made to an organization when, at the time the payment is made, the donor knows or has reason to know that the payment, or funds with which the payment is commingled, will be used to make contributions or expenditures. There is a presumption that the donor does not know that all or part of the payment will be used to make expenditures or contributions, unless the organization has made expenditures or contributions totaling \$1,000 or more during the calendar year in which the payment is made or in any of the immediately preceding four calendar years.

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1 **CIVIL LIABILITY**

2 13. Government Code section 91004 provides that any person who intentionally or
3 negligently violates any of the reporting requirements of the Act shall be liable in a civil action in an
4 amount up to the amount(s) not properly reported. Persons that violate Government Code sections
5 84200 and 84605 are liable in a civil action brought pursuant to Government Code section 91001,
6 subdivision (b).

7 14. Government Code 91005.5 provides that any person who violates any provision of the
8 Act, for which no specific civil liability is provided, shall be liable in a civil action brought pursuant to
9 Government Code section 91001, subdivision (b) for an amount up to five thousand dollars (\$5,000) per
10 violation.

11 15. Pursuant to Government Code sections 81004, subdivision (b) and 84100, and CCR
12 section 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee
13 complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the
14 reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the
15 committee, for any reporting violations committed by the committee. (Gov. Code § 91006.)

16 16. Pursuant to Government Code section 91003, subdivision (a), a person may be sued for
17 injunctive relief to enjoin violations or to compel compliance with the provisions of the Act.

18 **FIRST CAUSE OF ACTION**

19 (ONE VIOLATION – FAILURE TO FILE A STATEMENT OF ORGANIZATION)

20 17. Plaintiff realleges, and incorporates herein, paragraphs 1 through 16, as though set
21 forth at length.

22 18. Pursuant to Government Code section 84101, subdivision (a), a committee that is a
23 committee by virtue of receiving contributions as specified in subdivision (a) of Section 82013 shall file
24 with the Secretary of State a statement of organization within 10 days after it has qualified as a
25 committee under section 82013, subdivision (a). Qualification occurs when the committee directly or
26 indirectly receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year. A
27 committee of this kind is commonly referred to as a "recipient" committee.

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1 19. During the calendar year 2001, defendant ACRC made \$50,000 in monetary payments
2 and \$17,093 in nonmonetary payments to RPI. These payments were made for a political purpose as
3 defined in CCR section 18215, subdivision (a)(1).

4 20. During the period January 1, 2002, to March 31, 2002, RPI reported receiving from
5 Defendant ACRC \$677,900 in monetary contributions and \$119,122 in nonmonetary contributions.
6 Pursuant to CCR section 18215, subdivision (b)(1), any payments made to defendant ACRC during this
7 time were made at a time when the donor knew or had reason to know that the payments were to be used
8 to make contributions. Therefore, payments received by defendant ACRC after the calendar year 2001
9 were “contributions” as defined in CCR section 18215, and Defendant ACRC qualified as a committee
10 that was required to file a statement of organization within ten days of reaching the \$1,000 threshold
11 established by Government Code section 82013, subdivision (a).

12 21. By failing to file a statement of organization within ten days of defendant ACRC
13 receiving \$10,000 in contributions, defendants ACRC and Ward Connerly violated Government Code
14 section 84101, subdivision (a).

15 **SECOND CAUSE OF ACTION**

16 (THREE VIOLATIONS – FAILURE TO FILE A SEMIANNUAL STATEMENT)

17 22. Plaintiff realleges, and incorporates herein, paragraphs 1 through 16, and 18 through 20,
18 as though set forth at length.

19 23. Government Code section 84200, subdivision (a) requires a recipient committee to file
20 two semiannual campaign statements each year. The first semiannual campaign statement, covering the
21 first half of the year, must be filed by July 31. The second semiannual campaign statement, covering the
22 second half of the year, must be filed by January 31 of the following year. Under section 84215, the
23 statement must be filed with the Office of the Secretary of State, and copies must be filed at other
24 locations as specified in subdivisions (a)-(c) of that section.

25 **FAILURE TO FILE A SEMIANNUAL STATEMENT BY JULY 31, 2002**

26 24. After defendant ACRC qualified as a committee receiving contributions of \$1,000 or
27 more, defendants had a duty to file a semiannual campaign statement for defendant ACRC no later than
28 July 31, 2002, disclosing the contribution and expenditure activity of defendant ACRC during the

1 semiannual reporting period of January 1, 2002, through June 30, 2000. Defendants failed to file a
2 semiannual campaign statement disclosing the contribution and expenditure activity of defendant ACRC
3 by the July 31, 2002, due date.

4 25. By failing to file a semiannual campaign statement by July 31, 2002, defendants ACRC
5 and Ward Connerly violated Government Code section 84200, subdivision (a).

6 FAILURE TO FILE A SEMIANNUAL STATEMENT BY JANUARY 31, 2003

7 26. As defendant ACRC qualified as a recipient committee, defendants had a duty to file a
8 semiannual campaign statement for defendant ACRC no later than January 31, 2002, disclosing the
9 contribution and expenditure activity of defendant ACRC during the semiannual reporting period of July
10 1, 2002, through December 31, 2002. Defendants failed to file a semiannual campaign statement
11 disclosing their contribution and expenditure activity by the January 31, 2002, due date.

12 27. By failing to file a semiannual campaign statement by January 31, 2002, defendants
13 ACRC and Ward Connerly violated Government Code section 84200, subdivision (a).

14 FAILURE TO FILE A SEMIANNUAL STATEMENT BY JULY 31, 2003

15 28. As defendant ACRC qualified as a recipient committee, defendants had a duty to file a
16 semiannual campaign statement for defendant ACRC no later than July 31, 2003, disclosing the
17 contribution and expenditure activity of defendant ACRC during the semiannual reporting period of
18 January 1, 2003, through June 30, 2003. Defendants failed to file a semiannual campaign statement
19 disclosing their contribution and expenditure activity by the July 31, 2002, due date.

20 29. By failing to file a semiannual campaign statement by July 31, 2003, defendants ACRC
21 and Ward Connerly violated Government Code section 84200, subdivision (a).

22 **THIRD CAUSE OF ACTION**

23 (THREE VIOLATIONS – FAILURE TO FILE REPORTS ELECTRONICALLY)

24 30. Plaintiff realleges, and incorporates herein, paragraphs 1 through 16, 18 through 20, 23,
25 24 and 26 as though set forth at length.

26 31. Government Code section 84605, subdivision (b) requires any general purpose committee
27 that cumulatively receives contributions or makes expenditures totaling fifty thousand dollars (\$50,000)
28 or more to support or oppose candidates for an elective state office or state measure, to file its campaign

1 statements and reports online or electronically with the Secretary of State, beginning July 1, 2000, and
2 for every reporting period thereafter.

3 FAILURE TO ELECTRONICALLY FILE A SEMIANNUAL STATEMENT BY JULY 31, 2002

4 32. During the semiannual reporting period of January 1, 2002, through June 30, 2002,
5 defendant ACRC received contributions and made expenditures of \$50,000 or more to support a state
6 ballot measure.

7 33. As defendant ACRC was a general purpose committee that cumulatively received
8 contributions totaling \$50,000 or more and made expenditures totaling \$50,000 or more, defendants
9 thereafter had a continuing duty to file the campaign statements of defendant ACRC electronically with
10 the Office of the Secretary of State in addition to filing the statements in a paper format.

11 34. As described in the Second Cause of Action, at paragraph 24, defendants had a duty to
12 file a semiannual statement disclosing contributions and expenditures made from January 1, 2002,
13 through June 30, 2002.

14 35. As a consequence of defendant ACRC having received contributions and having made
15 expenditures totaling \$50,000 or more, defendants were required to electronically file a semiannual
16 statement for the period January 1, 2002, through June 30, 2002, in addition to the manually filed paper
17 version of the report, as described in the Second Cause of Action. Defendants failed to electronically
18 file a semiannual statement by the July 31, 2002, due date.

19 36. By failing to electronically file a semiannual statement for the period January 1, 2002,
20 through June 30, 2002, by the July 31, 2002 due date, defendants ACRC and Ward Connerly violated
21 Government Code section 84605, subdivision (b).

22 FAILURE TO ELECTRONICALLY FILE A SEMIANNUAL STATEMENT BY JANUARY 31, 2003

23 37. As described in the Second Cause of Action, at paragraph 26, defendants had a duty to
24 file a semiannual statement disclosing contributions and expenditures made for the reporting period July
25 1, 2002, through December 31, 2002, by January 31, 2003.

26 38. As a consequence of defendant ACRC having received contributions and having made
27 expenditures totaling \$50,000 or more, defendants were required to electronically file a semiannual
28 statement for the period July 1, 2002, through December 31, 2002, in addition to the manually filed

1 paper version of the report, as described in the Second Cause of Action. Defendants failed to
2 electronically file a semiannual statement by the January 31, 2003, due date.

3 39. By failing to electronically file a semiannual campaign statement by January 31, 2003,
4 for the reporting period July 1, 2002, through December 31, 2002, defendants violated Government
5 Code section 84605, subdivision (b).

6 FAILURE TO ELECTRONICALLY FILE A SEMIANNUAL STATEMENT BY JULY 31, 2003

7 40. As described in the Second Cause of Action, at paragraph 28, defendants had a duty to
8 file a semiannual statement disclosing contributions and expenditures made for the reporting period
9 January 1, 2003, through June 30, 2003, by July 31, 2003.

10 41. As a consequence of defendant ACRC having received contributions and having made
11 expenditures totaling \$50,000 or more, defendants were required to electronically file a semiannual
12 statement for the period January 1, 2003, through June 30, 2003, in addition to the manually filed paper
13 version of the report, as described in the Second Cause of Action. Defendants failed to electronically
14 file a semiannual statement by the July 31, 2003, due date.

15 42. By failing to electronically file a semiannual campaign statement by July 31, 2003, for
16 the reporting period January 1, 2003, through June 30, 2003, defendants violated Government Code
17 section 84605, subdivision (b).

18 **INJUNCTIVE RELIEF**

19 43. Defendants' wrongful conduct, unless and until enjoined by order of this court, will cause
20 great and irreparable injury to plaintiff's ability to effectively enforce the provisions of the Political
21 Reform Act with respect to the public disclosure of the campaign contributions received by defendants,
22 and will deny the public its right to be informed of the sources of the contributions made in support of
23 the Proposition 54 campaign.

24 44. Plaintiff has no adequate remedy at law, in that unless this court acts to require
25 defendants to disclose the true sources of the contributions received by defendant ACRC, California
26 voters will be permanently deprived of their right to receive information vital to making an informed
27 decision before the October 7, 2003, special election.

28 //

1 WHEREFORE, plaintiff prays for judgment against defendants as follows:

2 1. For statutory penalties against defendants, payable to the “General Fund of the State of
3 California,” according to proof, in an amount up to the amount not properly reported, as permitted by
4 Government Code section 91004;

5 2. For an order requiring defendants to show cause, if any they have, why they should not
6 be enjoined as set forth in this complaint, during the pendency of this action;

7 3. For a preliminary injunction, and a permanent injunction, enjoining defendants, and each
8 of them, and their agents, servants, and employees, and all persons acting in concert with them, or for
9 them:

10 a. From violating and continuing to violate the Political Reform Act by refusing to
11 file the required campaign disclosure statements, as set forth above, disclosing the true sources of the
12 contributions defendant ACRC has received with respect to the contributions defendant ACRC has made
13 to the Racial Privacy Initiative Committee;

14 b. To immediately file each of the campaign disclosure documents, as set forth
15 above, disclosing the true sources of the contributions that defendant ACRC has received with respect to
16 the contributions defendant ACRC has made to the Racial Privacy Initiative Committee;

17 c. To timely file such other campaign statements and reports as may become due
18 under the Political Reform Act prior to the October 7, 2003, election, disclosing the true sources of the
19 contributions that defendant ACRC has received with respect to the contributions defendant ACRC has
20 made to the Racial Privacy Initiative Committee;

21 4. For costs of litigation and reasonable attorneys’ fees as provided by Government Code
22 section 91003, subdivision (a);

23 5. For such other and further relief as the Court may deem proper.
24

25 Dated:

FAIR POLITICAL PRACTICES COMMISSION

26
27 By:

28 William J. Lenkeit
Attorneys for Plaintiff
Fair Political Practices Commission